REMARKS

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested. Claims 1, 13, 16, 30, 41, 44, 58, 69, 72 and 87 are currently being amended, claim 89 is currently being canceled without prejudice, and no claims are currently being added. Therefore, claims 1-88 are pending in the application.

Information Disclosure Statement

Applicants filed an Information Disclosure Statement for this application on June 29, 2006, through the USPTO's EFS-Web system. Applicants request that the Examiner consider the references cited therein and return a copy of the initialled and signed PTO-1449 Form with the next paper in this application.

Written Statement regarding Substance of 6/26/06 Interview per 37 CFR 1.133(b)

Applicants appreciate very much the opportunity to discuss the rejections in this application with Examiner Nguyen in the telephone interview that occurred on June 26, 2006. In accordance with the requirements of 37 CFR 1.133(b), and the Manual of Patent Examining Procedure (MPEP) §713.04, Applicants provide the following written statement of the reasons presented at the interview as warranting favorable action.

Those participating in the interview were Examiner Nguyen and the undersigned attorney of record. No exhibits were shown or discussed. The claims that were discussed were claim 1 and dependent claim 13. The prior art that was discussed was U.S.

Patent No. 6,594,699 to Sahai et al. ("Sahai et al.") and U.S. Patent No. 6,061,722 to Lipa et al. ("Lipa et al.").

The general thrust of the Applicants' principal arguments that were discussed in the interview were as follows. Applicants have previously amended the independent claims twice to emphasize that the primary reference of Sahai et al. does not disclose the claimed step of "automatically selecting a service level that is selected from among a plurality of predefined service levels that set combinations of transfer parameters and is determined to be available to the user device for transferring content thereto based upon whether the determined capabilities of the user device meet minimum requirements for one of the predefined service levels". Applicants argued that Sahai et al. does not disclose "predefined service levels" but instead gives wide discretion for a content server to freely adjust combinations of content delivery parameters to match user capabilities. Applicants asserted that the Examiner's written rejections do not appear to specifically point out where Sahai et al. discloses such "predefined service levels". Applicants asserted that this is because Sahai et al. does not disclose or teach the limitation of selecting from among a plurality of "predefined service levels".

In response to this argument the Examiner indicated that based on Applicants' specification he interprets "predefined service levels" broadly, and because of this he is of the opinion that Sahai et al. discloses such "predefined service levels". As such, no agreement was reached with respect to this argument, and the Examiner indicated that he would maintain the rejections.

Regarding proposed amendments, the undersigned attorney suggested amending claim 1 to further define the concept of

"predefined service level". The undersigned attorney suggested, for example, amending the claim to recite that the predefined service levels are "defined before a request to transfer content to the user is received". However, the Examiner indicated that he is of the opinion that such an amendment would not overcome the rejection. As such, no agreement was reached with respect to such an amendment.

In response to the undersigned's request for suggestions, the Examiner suggested amending the independent claims to include language relating to an "upgrade" feature such as is discussed in Applicants' specification. Applicants' dependent claim 13 and Lipa et al. were briefly discussed in this regard. While no specific amendment was discussed, and no agreements were reached, the Examiner indicated that he would be open to considering such an amendment and that it could possibly overcome the rejection but that he would need to review Lipa et al. some more.

Claim Rejections under 35 U.S.C. 102

Claims 1-12, 16-18, 23-40, 44-46, 51-68 and 72-74 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,594,699 to Sahai et al. ("Sahai et al."). Applicants respectfully traverse these rejections.

While Applicants continue to believe and assert that Sahai et al. does not disclose Applicants' claimed "predefined service levels", Applicants nevertheless wish to advance the present application to allowance as quickly as possible. Therefore, in accordance with the Examiner's suggestion made during the June 26, 2006, telephone interview, Applicants have amended independent claim 1 to include language relating to an "upgrade"

feature. Specifically, Applicants have amended independent claim 1 to recite "determining whether an upgrade could make any additional of the plurality of predefined service levels available to the user device". This amendment is supported by Applicants' specification at, for example, page 22, line 21 to page 24, line 6, as well as FIGS. 5-9 and claim 13. Independent claims 30 and 58 have been amended in a similar manner.

In making the Section 103 rejections, the Examiner acknowledges that Sahai et al. fails to teach determining an upgrade that could provide a different service level. (See Office Action mailed 4/7/06, page 7, paragraph 22). As such, the Examiner asserts that col. 2, lines 30-45 of Lipa et al. teaches determining an upgrade that could provide a different service level. (See Office Action mailed 4/7/06, page 7, paragraph 22). Applicants assert, however, that this portion of Lipa et al. teaches nothing about determining an upgrade that could provide a different service level. In fact, Applicants are unable to find the terms "upgrade" or "service level" anywhere in Lipa et al.

In addition, and as is discussed in detail below, Applicants assert that there would be no motivation for a person of ordinary skill in the art to somehow modify Sahai et al. to incorporate the teachings of Lipa et al. This is because any such modification would change Sahai et al.'s principal of operation and make it unsatisfactory for its intended purpose. Again, detailed support for this argument is provided below.

Therefore, the rejections of amended independent claims 1, 30 and 58 should be withdrawn. Furthermore, the rejections of their dependent claims should be withdrawn for at least these same reasons.

Applicants have amended independent claim 16 to incorporate

the limitations of dependent claim 87. Namely, amended independent claim 16 now recites "wherein selecting a service level is performed at a network service manager device independent of a network provider from which the content is transferred". This amendment is supported by Applicants' specification at, for example, FIG. 1 and the associated description thereof, and page 20, line 15 to page 21, line 5. Independent claims 44 and 72 have been amended in a similar manner.

Because the limitations of dependent claim 87 have been incorporated into independent claim 16, the rejection of claim 16 under Section 102 has been overcome, but the rejection of dependent claim 87 under Section 103 presumably now applies to amended independent claim 16.

In rejecting dependent claim 87 under Section 103, the Examiner acknowledges that Sahai et al. fails to teach selecting a service level is performed at a network service manager device independent of a network provider from which the content is transferred. (See Office Action mailed 4/7/06, page 7-8, paragraph 23). As such, the Examiner asserts that Lipa et al. teaches selecting a service level is performed at a network service manager device independent of a network provider from which the content is transferred. (See Office Action mailed 4/7/06, page 8, paragraph 23). Applicants assert that this rejection should be withdrawn for several reasons.

Specifically, as mentioned above, Applicants are unable to find the term "service level" anywhere in Lipa et al. As such, Lipa et al. simply does not teach selecting a service level is performed at a network service manager device independent of a

network provider from which the content is transferred as asserted by the Examiner.

Next, the Examiner asserts that Lipa et al.'s operations center 101 corresponds to Applicants' claimed "network service manager device". But in the portions of Lipa et al. cited by the Examiner it is the client 122's front end 123 that measures the latency and determines the bandwidth, not the operations center 101. The cited portions do not indicate that a selection of a service level is performed at Lipa et al.'s operations center 101. As such, Lipa et al. does not teach selecting a service level is performed at a network service manager device independent of a network provider from which the content is transferred.

Another reason the rejections should be withdrawn is that there would be no motivation for a person of ordinary skill in the art to somehow modify Sahai et al.'s system to incorporate the teachings of Lipa et al. This is because any such modification would change Sahai et al.'s principal of operation and make it unsatisfactory for its intended purpose.

Namely, Lipa et al. teaches guiding the user to the best zone or server for optimal performance. (See Lipa et al., Abstract). In contrast, Sahai et al. teaches that the single server 10 adapts the media format to the client capabilities and adapts the streaming process according to the client capabilities and user specifications. (See Sahai et al., col. 2, lines 8-12, and col. 2, lines 59-64). Any attempted modification to Sahai et al. to make it guide the user to the best zone or server for optimal performance would change Sahai et al.'s operation principal that a single server adapts the media format and the

streaming process to the client capabilities and user specifications. Therefore, a person of ordinary skill in the art would not be motivated to make such a modification, which means that Sahai et al. combined with Lipa et al. cannot be used to establish a *prima facie* case of obviousness of Applicants' claims.

Therefore, the rejection of dependent claim 87 should be withdrawn, which means that the rejections of amended independent claims 16, 44 and 72 should be withdrawn. Furthermore, the rejections of their dependent claims should be withdrawn for at least these same reasons.

It is noted that dependent claim 87 has been amended to make it dependent on independent claim 30 instead of independent claim 16 since the limitations have been incorporated into independent claim 16. Furthermore, dependent claim 89 has been canceled without prejudice since those limitations have been incorporated into independent claim 72.

Claim Rejections under 35 U.S.C. 103

Claims 13-14, 19-21, 41-42, 47-49, 69-70, 75-77 and 86-89 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai et al. in view of U.S. Patent No. 6,061,722 to Lipa et al. ("Lipa et al."). Applicants respectfully traverse these rejections.

These rejections should all be withdrawn for at least the same reasons provided above for their respective amended independent claims.

Fees Believed to be Due

No extra claims fees are believed to be due.

C O N C L U S I O N

By way of this response, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

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